

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Karina Herrera	Team: Squad #7	CCRB Case #: 201908856	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/21/2018 11:05 AM	Location of Incident: 1 Hogan Place, 9th Floor (The District Attorney Squad's office)	Precinct: 05	18 Mo. SOL 12/21/2019	EO SOL 12/21/2019	
Date/Time CV Reported Fri, 09/27/2019 4:30 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 10/07/2019 4:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Bobby Wilkins	19409	952342	ESS 01
2. POM Patrick Fanning	08581	950392	ESS 01
3. DT3 Kenneth Faulkner	4612	941734	DBMN OP
4. DT3 Daniel Howell	07279	922521	DBMN OP
5. DT2 Gregory Welch	07382	889412	ESS 01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT2 James Quilty	02751	911363	032 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Kenneth Faulkner	Abuse: Detective Kenneth Faulkner strip-searched § 87(2)(b)	
B.DT3 Daniel Howell	Abuse: Detective Daniel Howell strip-searched § 87(2)(b)	
C.POM Bobby Wilkins	Force: Police Officer Bobby Wilkins struck § 87(2)(b) with a police shield.	
D.POM Bobby Wilkins	Force: Police Officer Bobby Wilkins used a taser against § 87(2)(b)	
E.POM Bobby Wilkins	Force: Police Officer Bobby Wilkins used physical force against § 87(2)(b)	
F.POM Patrick Fanning	Force: Police Officer Patrick Fanning used physical force against § 87(2)(b)	
G.DT2 Gregory Welch	Force: Detective Gregory Welch used physical force against § 87(2)(b)	
H.POM Bobby Wilkins	Force: Police Officer Bobby Wilkins used restraining straps on § 87(2)(b)	
I.POM Patrick Fanning	Force: Police Officer Patrick Fanning used restraining straps on § 87(2)(b)	
J.DT2 Gregory Welch	Force: Detective Gregory Welch used restraining straps on § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On September 27, 2019, § 87(2)(b) filed the following complaint with the CCRB via a letter.

At approximately 11:05 a.m. on June 21, 2018, Detective James Quilty from the 32<sup>nd</sup> Precinct Detective Squad arrested § 87(2)(b) at the New York County Criminal Courthouse located at 100 Centre Street in Manhattan for § 87(2)(b) with the help of Detective Kenneth Faulkner and Detective Daniel Howell from Detective Borough Manhattan North Operations, and the officers escorted § 87(2)(b) to the holding cell area of the District Attorney Squad's office (DA), which was located at 1 Hogan Place, 9<sup>th</sup> Floor in Manhattan (Board Review 01). While they were at the holding cell area, Detective Faulkner and Detective Howell allegedly strip-searched § 87(2)(b) and then they placed him in a holding cell (**Allegation A: Abuse of Authority – Strip-Search,** § 87(2)(g) (**Allegation B: Abuse of Authority – Strip-Search,** § 87(2)(g)

The officers eventually instructed § 87(2)(b) to stand up while he was inside of the holding cell and he refused to do so. The officers requested assistance, and Police Officer Bobby Wilkins, Police Officer Patrick Fanning, and Detective Gregory Welch from the Emergency Services Unit (ESU) arrived to the incident location. The ESU officers entered § 87(2)(b)'s holding cell and Police Officer Wilkins pushed § 87(2)(b) with a police shield (**Allegation C: Force – Police Shield,** § 87(2)(g) Police Officer Wilkins tased § 87(2)(b) and he fell onto the floor (**Allegation D: Force – Taser,** § 87(2)(g) The ESU officers proceeded to hit § 87(2)(b) while he was on the floor (**Allegation E: Force – Physical Force,** § 87(2)(g) (**Allegation F: Force – Physical Force,** § 87(2)(g) (**Allegation G: Force – Physical Force,** § 87(2)(g) The ESU officers placed § 87(2)(b) in a mesh restraint bag and he was transported to § 87(2)(b) in Manhattan (**Allegation H: Force – Restraining Straps,** § 87(2)(g) (**Allegation I: Force – Restraining Straps,** § 87(2)(g) (**Allegation J: Force – Restraining Straps,** § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Detective Kenneth Faulkner strip-searched** § 87(2)(b)

**Allegation (B) Abuse of Authority: Detective Daniel Howell strip-searched** § 87(2)(b)

§ 87(2)(b) stated that he went to the New York County Criminal Courthouse, which was located at 100 Centre Street in Manhattan, for a court appearance. When he arrived, the officers arrested § 87(2)(b) and then they escorted him to a holding cell area that was within the same building and it was in an enclosed room (Board Review 02). Inside of the holding cell area, Detective Faulkner instructed § 87(2)(b) to remove all of his clothes while Detective Howell was present; § 87(2)(b) was not sure if Detective Quilty was there at the time. In front of the officers, § 87(2)(b) removed all of his clothes until he was fully naked. The officers instructed § 87(2)(b) to place his clothes back on and he did so. The officers then placed § 87(2)(b) in a holding cell.

Detective Faulkner and Detective Howell stated that on the incident date, they assisted Detective Quilty with one of his cases where he had established probable cause to arrest § 87(2)(b) (Board Review 01) (Board Review 03) (Board Review 04). § 87(2)(b) was scheduled for a

court appearance, so the officers went to the courthouse and they arrested § 87(2)(b) when he arrived there. Detective Faulkner and Detective Howell were present at the time § 87(2)(b) was arrested, but they did not remember where Detective Quilty was located. The officers escorted § 87(2)(b) to the DA Squad's office, which they could access from within the same building, but the address for it was 1 Hogan Place, 9<sup>th</sup> Floor in Manhattan. The officers took § 87(2)(b) to the DA Squad's office because it had a holding cell area where they could process his arrest. When they arrived to the holding cell area, the officers conducted a search of § 87(2)(b) including removing his shoe laces, his belt, and any contents in his pockets, which is part of the regular procedure for arrested individuals. Detective Howell and Detective Faulkner did not instruct § 87(2)(b) to remove any articles of clothing and they did not order him to become fully naked. Detective Faulkner and Detective Howell did not strip-search § 87(2)(b) during the incident. After the officers searched § 87(2)(b) they placed him inside of a holding cell.

Detective Quilty stated that he arrived to the incident location after the officers had placed § 87(2)(b) in the holding cell (Board Review 05). Detective Faulkner and Detective Howell did not inform Detective Quilty about any strip-searches that were conducted on § 87(2)(b) during the incident, and § 87(2)(b) did not mention a strip-search at any point. None of the officers strip-searched § 87(2)(b) while Detective Quilty was present and there was no reason to strip-search § 87(2)(b) during the incident.

None of the ESU officers had arrived to the incident location at the time the strip-search allegedly happened.

§ 87(2)(g)

**Allegation (C) Force: Police Officer Bobby Wilkins struck § 87(2)(b) with a police shield.**

**Allegation (D) Force: Police Officer Bobby Wilkins used a taser against § 87(2)(b)**

**Allegation (E) Force: Police Officer Bobby Wilkins used physical force against § 87(2)(b)**

**Allegation (F) Force: Police Officer Patrick Fanning used physical force against § 87(2)(b)**

**Allegation (G) Force: Detective Gregory Welch used physical force against § 87(2)(b)**

**Allegation (H) Force: Police Officer Bobby Wilkins used restraining straps on § 87(2)(b)**

**Allegation (I) Force: Police Officer Patrick Fanning used restraining straps on § 87(2)(b)**

**Allegation (J) Force: Detective Gregory Welch used restraining straps on § 87(2)(b)**

§ 87(2)(b) stated that immediately after he arrived to the courthouse, the officers approached him and they instructed him to place his hands behind his back because he was under arrest. § 87(2)(b) did not place his hands behind his back; instead, he asked them, "What for?" The officers handcuffed § 87(2)(b) and they escorted him to the holding cell area. While they were walking, § 87(2)(b) repeatedly asked the officers, "What am I getting arrested for?" None of the officers

responded to § 87(2)(b)'s inquiries. When they arrived to the holding cell area, the officers placed § 87(2)(b) inside of a holding cell and he asked them approximately two or three more times, "What am I being arrested for?" The officers did not answer § 87(2)(b) so he paced back-and-forth in the cell, but he eventually sat down on a bench.

The officers at some point told § 87(2)(b) "Let's talk – get up," but § 87(2)(b) refused. The officers instructed § 87(2)(b) to stand up approximately two or three times, but he did not follow their orders because he was "angry" about the arrest and he did not want to be bothered anymore. The officers told § 87(2)(b) "I hope you make this easy." § 87(2)(b) replied, "Whatever you guys are going to do, do whatever you're going to do. I don't want to talk to you guys because you're not telling me what I'm being arrested for." The officers asked § 87(2)(b) "Oh, so you won't make this easy?" § 87(2)(b) responded, "No, I'm not. I don't want to talk." The officers told § 87(2)(b) that they were going to request ESU.

At some point, four ESU officers, Police Officer Wilkins, Police Officer Fanning, Detective Welch, and Detective John Ryan, who is no longer a uniformed member of service, entered the holding cell area. The ESU officers instructed § 87(2)(b) to stand up, and he refused to do so. One of the ESU officers told § 87(2)(b) either, "We're going to tase you," or, "We're going to make you get up," but § 87(2)(b) did not remember who said that. § 87(2)(b) replied, "Do what you have to do." The ESU officers opened the door to the holding cell and § 87(2)(b) remained seated. As the ESU officers began entering the cell, § 87(2)(b) stood up from the bench, but he did not move in any particular direction. Police Officer Wilkins used a police shield to push § 87(2)(b) once, which caused him to make contact with the back wall. In a follow-up statement, § 87(2)(b) stated that at the time the ESU officers entered the holding cell, he was not making any body movements, but when the police shield pushed him, he held his left forearm in front of his chest in order to guard himself (Board Review 06). § 87(2)(b) did not make any additional movements at the time, including any retaliatory force against the officers.

Immediately after pushing him with the shield, Police Officer Wilkins tased § 87(2)(b) by discharging prongs at his chest. § 87(2)(b) was tased for approximately three to four seconds, but he did not remember how many electrical currents he felt in that span of time. § 87(2)(b) fell onto the floor and he could not move. The ESU officers approached § 87(2)(b) while he was on the floor and they hit him approximately eight or nine times all over his body, including the middle of his back, both of his arms, and both of his ribs. § 87(2)(b) did not know what the officers were using to hit him because he could not see them at that time. § 87(2)(b) did not make any body movements while he was on the floor and he did not resist the officers. § 87(2)(b) did not make any movements, including with his hands, that would have prevented the officers from handcuffing him. The ESU officers eventually handcuffed § 87(2)(b) and they placed him in a mesh restraint bag. § 87(2)(b) was taken to an ambulance and he was transported to § 87(2)(b) in Manhattan (Board Review 09). § 87(2)(b) stated that the incident caused him to have an asthma attack, so he was treated for that at the hospital, and the prongs from the taser were removed from his chest.

§ 87(2)(b) provided medical records from § 87(2)(b)'s visit on the incident date (Board Review 09). The paperwork showed that at the time § 87(2)(b) arrived at the hospital, he was in a mesh restraint bag and he was under arrest. § 87(2)(b) had been tased and he was complaining about shortness of breath. § 87(2)(b) was verbally aggressive in the triage room, and although he was not suicidal, he was marked down as homicidal. The hospital staff described § 87(2)(b) as agitated, but "redirectable." The prongs from the taser were removed from § 87(2)(b)'s chest and he was administered an asthma pump. § 87(2)(b) was medically cleared and then he was transferred to the psychiatric department for a pre-arraignment evaluation.

By the time § 87(2)(b) arrived to the psychiatric department, he was calm, cooperative, and pleasant, and he denied having a psychiatric history. § 87(2)(b) told the psychiatrist that he was aware of the details regarding his arrest and the allegations that were made against him, but that he had refused to get fingerprinted, so he was subsequently tased. Before § 87(2)(b) was discharged from the psychiatric department, he asked the psychiatrist if he could be given some kind of medication that would keep him calm during his arraignment, and a pill was administered to him. § 87(2)(b) was released from the hospital into police custody and he was taken to his arraignment.

Detective Faulkner and Detective Howell stated that at the time the officers arrested § 87(2)(b) he was calm and cooperative. The officers explained to § 87(2)(b) why he was being apprehended and they escorted him to the holding cell area, which was within an enclosed room that had a door as its only entrance and exit. The officers explained that the door to the holding cell area would have to be open in order for someone to see into it from outside of the room. Detective Howell and Detective Faulkner placed § 87(2)(b) in a holding cell, and shortly afterwards, he began yelling and cursing, including, “I ain’t getting handcuffed – why are you arresting me?”

Detective Quilty eventually arrived to the incident location and the detectives explained to § 87(2)(b) what the arrest would entail, including fingerprints, arrest photographs, and court appearances. § 87(2)(b) told the officers that he refused to do any of that. The detectives told § 87(2)(b) that they had to go through those steps as part of the arrest processing and they explained to him the legal implications of a prisoner who does not want to be fingerprinted. § 87(2)(b) told the detectives that he would use physical force against them if they entered the cell. Detective Quilty explained that when a prisoner refuses to get fingerprinted, they usually get taken to central booking where a judge court orders them to do it, but due to § 87(2)(b)’s threatening remark and his demeanor, the detectives decided to request ESU’s assistance so they could extract him from the cell. Detective Faulkner added that ESU is trained to deescalate these kinds of issues more than the detectives. The officers informed § 87(2)(b) that they were going to contact ESU in case he wanted to cooperate. § 87(2)(b) continued being uncooperative and he told the officers, “Do what you got to do.”

When the ESU officers arrived, they entered the holding cell area together, and everyone else remained outside of the room. The ESU officers closed the door to the room, so Detective Quilty, Detective Faulkner, and Detective Howell did not see their interaction with § 87(2)(b). Approximately five minutes later, the ESU officers opened the door to the holding cell area and § 87(2)(b) was handcuffed in a mesh restraint bag.

Police Officer Fanning and Detective Ryan arrived to the incident location and they entered the holding cell area alone (Board Review 07) (Board Review 08). Police Officer Fanning and Detective Ryan spoke to § 87(2)(b) for approximately thirty minutes in an attempt to gain his compliance and trust. During their conversation, § 87(2)(b) told the officers that if they entered the cell he would hurt them, and he raised his voice a few times. Since § 87(2)(b) was not complying, Police Officer Fanning and Detective Ryan requested an additional ESU unit to the incident location so they could conduct a cell extraction, which requires four officers to ensure everyone’s safety. Police Officer Wilkins and Detective Welch eventually arrived to the incident location, and all of the ESU officers entered the holding cell area together.

Inside of the room, Police Officer Wilkins and Detective Welch attempted to speak with § 87(2)(b) but they were unsuccessful. After Police Officer Wilkins and Detective Welch spoke with § 87(2)(b) for approximately ten minutes, the ESU officers told § 87(2)(b) that they

were going to enter the cell. The ESU officers issued § 87(2)(b) a warning by telling him, “We’re going in there – turn around and put your hands behind your back. You’re going to be removed.” Police Officer Fanning and Police Officer Wilkins did not remember § 87(2)(b)’s response. At that point, Police Officer Wilkins was holding a police shield with his left hand and a taser with his right hand. Police Officer Wilkins was equipped with a police shield during the incident for the officers’ protection in case, for example, § 87(2)(b) spat at them.

The ESU officers opened the door to the holding cell and Police Officer Wilkins entered first with the police shield held up in front of him. Immediately after the ESU officers entered the cell, § 87(2)(b) began to fight with Police Officer Wilkins while the other officers were behind him. § 87(2)(b) grabbed the police shield and pulled it. § 87(2)(b) began kicking Police Officer Wilkins and he attempted to punch Police Officer Wilkins around the shield. Police Officer Wilkins separated himself from § 87(2)(b) by pushing him with the police shield once. Police Officer Wilkins’ push did not cause § 87(2)(b) to make contact with any walls. After Police Officer Wilkins separated himself from § 87(2)(b) he immediately said, “Taser, taser, taser,” and then he tased § 87(2)(b). Police Officer Wilkins tased § 87(2)(b) for one cycle, which lasted approximately five seconds. Police Officer Wilkins tased § 87(2)(b) in order to give the officers the opportunity to position themselves appropriately to take him into custody. Police Officer Wilkins chose to tase § 87(2)(b) instead of the alternative, which would have been to physically fight him, and that decision was up to his discretion. Police Officer Wilkins explained that physically fighting § 87(2)(b) would have caused more damage than a taser.

After § 87(2)(b) was tased, he fell onto the floor and the ESU officers approached him. § 87(2)(b) continued to actively resist the officers, including kicking and punching. Anytime the officers would grab § 87(2)(b)’s hands in order to place them behind his back, § 87(2)(b) would pull them away from their grasp. The officers instructed § 87(2)(b) multiple times to give them his hands, but § 87(2)(b) was laying on top of his right arm – holding it underneath him – and he had his left arm wrapped around the bars of the cell. In an effort to place § 87(2)(b) in handcuffs, Police Officer Fanning used his hand to hit § 87(2)(b) approximately once or twice on the rear-left side of his torso. Police Officer Fanning did not hit § 87(2)(b) anywhere else. Immediately after Police Officer Fanning hit § 87(2)(b) he was able to grab § 87(2)(b)’s left hand and place it behind his back. Shortly after, the ESU officers handcuffed § 87(2)(b). Police Officer Wilkins did not hit § 87(2)(b) while he was on the floor.

After § 87(2)(b) was handcuffed, he continued moving his legs in an attempt to kick the officers. The ESU officers restrained § 87(2)(b)’s legs with Velcro straps so he would stop kicking. Although § 87(2)(b) was handcuffed and restrained with Velcro straps, he was still irate and he continued making body movements, so the ESU officers placed him in a mesh restraint bag as well in order to ensure everyone’s safety, including the EMTs who would be transporting him to the hospital. After § 87(2)(b) was placed in the mesh restraint bag, he was taken to an ambulance and he was transported to § 87(2)(b) in Manhattan.

The Taser Report for the taser that Police Officer Wilkins used during the incident showed that § 87(2)(b) was tased once for approximately four seconds (Board Review 10).

According to Patrol Guide Procedure 221-02, police officers may use force with an individual if they are being uncooperative in order to gain control, compliance, or custody of them (Board Review 11). The procedure encourages officers to use de-escalation techniques in order to reduce or eliminate the need to use force, and increase the likelihood of gaining the subject’s voluntary compliance. It also allows officers to request ESU’s assistance if it is necessary. If the use of de-escalation and conflict negotiation techniques fail to persuade an uncooperative subject to become

cooperative, then the uniformed members of service may advise the offender that physical force and other devices, such as a taser and a police shield, will be used in order to handcuff and restrain them. If threatening the subject with force does not result in compliance, then members of service may use a reasonable amount of force to gain control of the subject.

Patrol Guide Procedure 221-08 authorizes the use of tasers in situations where individuals are exhibiting active aggression and to prevent them from hurting themselves or other people (Board Review 12). Tasers are considered “less lethal” because it provides a greater margin of safety for the member of service who might otherwise have to use physical force to subdue a dangerous subject.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four CCRB complaints and has been named as a victim in thirteen allegations (Board Review 16):
  - § 87(2)(b)
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- Detective Faulkner has been a member of service for thirteen years and has been a subject in four CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)
- Detective Howell has been a member of service for twenty-one years and has been a subject in six CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Fanning has been a member of service for eight years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Police Officer Wilkins has been a member of service for eight years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Detective Welch has been a member of service for thirty-four years and has been a subject in five CCRB complaints and seven allegations, none of which were substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]



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- Squad No.: 7

Squad Leader: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Manager Vanessa Rosen April 21, 2020

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_